IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 1ST JANUARY 2007 / 11TH PAUSHA 1928

OP.No. 7258 of 1999(L)

PETITIONER:
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1 KUNJUKUINJAMMA JACOB,
W/O.P.P.JACOB, PLAVARA PEEDIKAYIL,
VETTITHITTA P.O., PIRAVANTHOOR, KOLLAM 689 696.

BY ADV. SRI.K.RAMAKUMAR
SRI.S.M.PRASANTH
SRI.T.RAMPRASAD UNNI

RESPONDENTS:
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1. STATE OF KERALA, REP.BY THE
CHIEF SECRETARY, THIRUVANANTHAPURAM.

2. THE DISTRICT JUDGE, KOLLAM.

3. THE DIVISIONAL FOREST OFFICER,
PUNALUR, KOLLAM DISTRICT.

BY GOVERNMENT PLEADER SRI.C.M.SURESH BABU (FOREST)

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 01/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S. SIRI JAGAN, J.

O.P. No. 7258 OF 1999 L

Dated this the 1st day of January, 2007

J U D G M E N T

The petitioner is the owner of a Jeep, which has been confiscated under section 61A of the Kerala Forest Act after the said vehicle was found to have been used for transporting forest produce illicitly. Pursuant to proceedings initiated under section 61A, Ext.P5 order has been passed by the authorised officer confiscating the vehicle under section 61A of the Act. The petitioner's appeal before the District Court, Kollam as CMA. No.123/97 did not meet with success as the appeal was also dismissed as devoid of merit. The petitioner is challenging Exts.P5 and P7 orders in this original petition.

2. Originally the petitioner raised a contention that no 61B notice has been issued to her. In view of the specific statement in Ext.P5 to the effect that the petitioner was in fact issued a show cause notice on 9.10.1997 under section 61B of the Act and she has filed written statements, the same cannot be countenanced. The petitioner's Advocate also did not controvert the said statement in Ext.P5 with any material on record. There is no such contention in the original petition also. As such, I do not find any merit in the said contention.

3. The petitioner would then contend that the respondents have not succeeded in proving that the vehicle belonging to her was used for illicit transport of forest produce. However, I do not agree with such contention in view of the evidence recorded by both the authorised officer and the District Judge especially since the Jeep itself was seized with the logs of teak wood in the same after chasing the Jeep for some distance when the people in the Jeep tried to hide the vehicle in a house from where only the officers have seized the Jeep with the forest produce therein.

4. The next contention raised by the learned counsel for the petitioner is that the onus of prima facie proving that the illicit use of the vehicle for transport of forest produce was with the knowledge or connivance of the owner is with the department. The counsel would argue that in this case there was no evidence on record to prima facie show that the illicit transport of the forest produce was with the knowledge or connivance of the petitioner. I am not inclined to agree with the proposition put forwarded by the petitioner's counsel in view of the express provisions in section 61B which reads as under:

> *" 61B. Issue of show cause notice before confiscation under section 61A :- (1) No order confiscating any timber, charcoal, firewood, ivory, tools, ropes, chains, boats, vehicles or cattle shall be made under section 61A unless the person from whom the same is seized -*
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> *(a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate such timber, charcoal, firewood, ivory,*

tools, ropes, chains, boats, vehicles or cattle;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation; and

(c) is given a reasonable opportunity of being heard in the matter.

(2) Without prejudice to the provisions of sub-section (1) no order confiscating any tool, rope, chain, boat, vehicle or cattle shall be made under section 61A if the owner of the tool, rope, chain, boat, vehicle or cattle proves to the satisfaction of the authorised officer that it was used in carrying the timber, charcoal, firewood or ivory without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the tool, rope, chain, boat, vehicle or cattle and that each of them had taken all reasonable and necessary precautions against such use."

In view of sub-section (2) of section 61B, the entire onus of proving that it was without knowledge or connivance of the petitioner and that the petitioner had taken all reasonable and necessary precautions against such use is squarely on the petitioner herself.

5. The further contention raised by the petitioner is that she had in fact produced all possible proof she could produce to show that she had taken all reasonable and necessary precautions against such use. But I find that the only thing that the petitioner has done in this regard is to file statements before the authorities which cannot take the place of evidence of any kind. Of course, the petitioner's counsel would contend that the petitioner has categorically stated before the authorised officer that the petitioner had instructed the driver to use the vehicle only

for legal purpose and not to use the same for any illegal purposes. But it is pertinent to note that the petitioner has not chosen to examine herself as a witness before the authorised officer to state the same on oath and giving an opportunity to the authorised officer to cross examine the petitioner in that regard. As such, the petitioner had not discharged her onus cast upon her by sub-section (2) of section 61B by producing any evidence either before the authorised officer or before the District Judge. In fact, the District Judge on a consideration of the entire evidence in the case has come to the conclusion that the petitioner has not done anything to prove that the illicit transport of forest produce in her vehicle was without the knowledge or connivance of herself and that she had taken all reasonable and necessary precautions against such use. In this connection, it would be worthwhile to reproduce here the findings of the learned District Judge in this regard contained in paragraphs 27 to 31 of Ext.P7 judgment which read as under:

> *" 27. Therefore, the main aspect for consideration boils down to the restriction against confiscation detailed in Section 61B(2). As per the provision three conditions are to be satisfied: (1) The owner or his agent was totally unaware of the illicit use (2) The owner had taken all reasonable and necessary precautions against illicit use. (3) The person in charge of the vehicle had also taken reasonable and necessary precautions against the illicit use (See 1995 (2) KLT 772).*
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> *28. Therefore the owner has to satisfy the three conditions. If she satisfied only two such conditions she would not be entitled to get the benefit of the restrictions she would not be entitled*

to get the benefit of the restriction against confiscation. In para 6 of 1995 (2) KLT 772, it was observed that it was not enough that the owner established his innocence alone. He must further show that the person, who was in charge of the vehicle also had taken reasonable and necessary precautions against the illicit use.

29. In the present case it could be seen that with respect the person in charge of the vehicle at the relevant time, it is in evidence that immediately prior to the occurrence namely, on the night of 2.7.1997 the owner had put the vehicle in charge of Sudheer the driver. The objection dated 15.11.97 vide para 2 and 6, it is indicated that there was no proper care and caution exercised by the person in charge of the vehicle. The evidence on record indicated that the jeep had been to the forest area and it was using the jeep (the tyre marks of the vehicle was also at the spot) the forest offence was committed.

30. Therefore it is evident that the claimant/appellant had not satisfied the ingredients against the confiscation. The abscondance of A6 is a telling circumstance that, that the person in charge of the vehicle had not exercised reasonable care and caution against the user of the vehicle for illicit transmit of the timbers and as such it could be seen the challenges no made by the appellant against the order of confiscation was not at all sustainable. The comparative value of the vehicle and that of the timber pieces cannot have any impact on the case.

31. Thus it is found that the authrorised officer had complied with the statutory formalities and arrived at the decision with correct perspective. No illegality or impropriety has been committed by the authorised officer. All the points are found against the appellant.

In the result, the appeal is found devoid of merit. It is dismissed."

6. As such, I am fully satisfied that the petitioner has not succeeded in proving that the illicit transport was without the knowledge or connivance or that she had taken all reasonable and necessary precautions against such use. In the above circumstances, I do not find any merit in the contentions of the petitioner in this original petition. Therefore, the original petition fails and the same is hereby dismissed.

(S. SIRI JAGAN, JUDGE)

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S. SIRI JAGAN , J.

OP No.7258/99 L

J U D G M E N T

1st January, 2007